

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

**July 26, 2024**

MCPB No. 24-070

Final Forest Conservation Plan No. F20240230

Kings Crossing

Date of Hearing: July 8, 2024

## **RESOLUTION**

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on October 27, 2023, Jim Zhao and Dianna Lu (“Applicant”) filed an application for approval of a final forest conservation plan on approximately 5.99 acres of land located at 18505 Crossview Road, Boyds, MD 20841 (“Subject Property”) in the Germantown West Policy Area and the *Germantown Master Plan* (“Master Plan”) area; and

WHEREAS, Applicant’s final forest conservation plan application was designated Forest Conservation Plan No. F20240230, Kings Crossing (“Forest Conservation Plan”, “FFCP” or “Application”); and

WHEREAS, following review and analysis of the Application by Planning Board Staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board dated June 28, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on July 8, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Vice Chair Pedoeem, seconded by Commissioner Linden, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden voting in favor, with Commissioner Bartley absent.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240230 on the Subject Property, subject to the following conditions, which supersede all previous Preliminary Forest Conservation Plan conditions of approval for Kings Crossing:<sup>1</sup>

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<sup>1</sup> For the purpose of these conditions, the term “Applicant” shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

Approved as to

Legal Sufficiency:           /s/ Allison Myers            
M-NCPPC Legal Department

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. Before recordation of the plat and the start of any demolition, clearing, grading or construction, whichever comes first for this development application, the Applicant must:
  - a. Record a Category I Conservation Easement over all areas of forest retention and forest planting as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of General Counsel and must be recorded in the Montgomery County Land Records by deed. The Book/Page of this deed for this easement must be referenced on the record plat.
  - b. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest retention areas, forest planting areas and variance mitigation tree plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - c. Submit financial surety, in a form approved by the M-NCPPC Office of General Counsel, to the M-NCPPC Planning Department Inspection Supervisor for the 0.77 acres of new forest planting, for the thirteen (13) variance mitigation tree plantings, and maintenance for both, including invasive species management controls, credited toward meeting the requirements of the FFCP.
5. Within the first planting season following the stabilization of the applicable disturbed areas within the LOD, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FFCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 38.25 caliper inches, as shown on the approved FFCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

6. Within the first planting season following the stabilization of the applicable disturbed area within the LOD, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the reforestation plantings of 0.77 acres as shown on the approved FFCP.
7. Before initial acceptance inspection of the reforestation plantings, or as directed by the Forest Conservation Inspection Staff, the Applicant is to install the permanent conservation easement signage and the permanent easement fencing along the perimeter of the Category I Conservation Easements as shown on the FFCP.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The Final Forest Conservation Plan (“FFCP”) was reviewed and approved concurrently with the development plan application for Site Plan No. 820240070 to allow eleven (11) single family detached dwelling units and two (2) open space parcels. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines. The FFCP is in substantial compliance with the Preliminary Forest Conservation Plan approved by the Planning Board on July 20, 2023.

The Subject Property is zoned R-200 and is assigned a Land Use Category of High Density Residential (“HDR”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in the Land Use Table of the *Trees Technical Manual*. This results in an afforestation threshold of 15% and a conservation threshold of 20% of the Net Tract Area.

The tract area for forest conservation purposes includes the 5.99-acre Subject Property plus 0.45 acres of offsite disturbance associated with this Application, for a total net tract area of 6.44 acres. There is a total of 2.83 acres of existing forest on the Subject Property. The Application proposes to remove 1.54 acres

and retain 1.29 acres of forest. The proposed forest clearing generates a reforestation requirement of 0.77 acres if met within the same watershed as the project or within a designated Priority Area. The reforestation requirement increases to 1.54 acres if met outside of the watershed as the project or outside of a Priority Area. The Applicant proposes to meet the planting requirement on-site by planting 0.77 acres of new forest adjacent to portions of the existing forest. As conditioned, all of the retained and planted forest will be protected in a Category I Conservation Easement.

#### B. Minimum Forest Retention

Section 22A-12(f) of Montgomery County Code, Chapter 22A, the Forest Conservation Law (“FCL”), in general, states there are special provisions for minimum retention, reforestation and afforestation on any site developed under a cluster or other optional method of development in a one-family residential zone must include a minimum amount of forest on-site as part of meeting its total forest conservation requirement. Forest retention should be maximized where possible. This site is being developed under an optional method and is located within a one-family residential zone, R-200. As such, Section 22A-12(f) is applicable to this development site.

*22A-12(f)(2)(B) states, in part, that “In a planned development or a site development using a cluster or other optional method of development in a one-family residential zone, on-site forest retention must equal the applicable conservation threshold in subsection (a).” And in 22A-12(f)(2)(C), “On a site covered by this subsection, if existing forest is less than the minimum required retention, all existing forest must be retained and on-site afforestation up to the minimum standard must be provided. If existing forest is less than the applicable afforestation threshold in subsection (a), the afforestation threshold is the minimum on-site forest requirement.”*

Under the applicable provisions of Section 22A-12(f) the Applicant’s minimum on-site forest requirement would be the entire 2.83 acres of existing forest currently on-site. However, the FFCP proposes to remove 1.54 acres of existing forest. In order for the 1.54 acres of existing forest to be removed and the FFCP to be approved, the Planning Board must find that retention of this forest is not possible. Section 22A-12(f)(3) states that: *“If the Planning Board or Planning Director, as appropriate, finds that forest retention required in this subsection is not possible, the applicant must provide the maximum possible on-site retention in combination with on-site reforestation and afforestation, not including landscaping.”*

The Board finds that it is not possible for the Applicant to retain all of the 2.83 acres of existing forest on the Subject Property and satisfy the regulatory requirements for this development. Most of the existing forest is located in the northern portion of the existing parcel with a small pocket located in the south. The Applicant has contained the development along the periphery of the Subject Property, instead of spreading out the proposed 10 lots, thereby retaining a sizeable portion of the northern forest intact and adding 0.11 acres of reforestation to this area. All of the southern forest is retained and will be augmented with 0.66 acres of reforestation plantings. The Board finds that the Applicant has provided the maximum possible forest retention on the Property, in combination with sufficient on-site reforestation.

#### C. Forest Conservation Variance

The Planning Board approved a tree variance request with the Preliminary Forest Conservation Plan No. 120220020 dated July 20, 2023 (“PFCP”). The FFCP does not modify and is in compliance with that approved tree variance request.

Although the FFCP is in compliance with the requested tree variance submitted under the PFCP, the method of variance tree mitigation has changed since the PFCP. The PFCP was submitted on November 24, 2021 and reviewed under the FCL dated February 25, 2021 in which mitigation was not required for Protected Trees removed in a forest stand since it was reasoned that the forest conservation worksheets accounted for the mitigation. This requirement was changed under the Forest Conservation Law (“FCL”) passed and enacted on April 3, 2023. The current FCL requires mitigation for Protected Trees removed in a forest. The Application was submitted for review on October 27, 2023 and became subject to the current FCL.

Under the current FCL, the mitigation requirement applies to the four previously approved variance trees with a total diameter at breast height (DBH) to be removed of 153 inches. The Applicant proposes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 38.25 inches with the installation of 13 3-inch caliper overstory trees native to the Piedmont Region of Maryland on the Property outside of any rights-of-way and outside of any utility easements.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is

**July 26, 2024**

(which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

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**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of **3-0-1**; Chair Harris, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstaining, and Vice Chair Pedoeem necessarily absent, at its regular meeting held on Thursday, July 25, 2024, in Wheaton, Maryland and via video conference.



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Artie L. Harris, Chair  
Montgomery County Planning Board